Supreme Court, U.S.
FILED

No. (1) 10-1312

APR 22 2011

OFFICE OF THE CLERK

In The

Supreme Court of the United States

JIMMIE VICKERS,

Petitioner,

versus

WEEKS MARINE, INC., and
ATLANTIC SOUNDING CO., INC.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

JIMMIE VICKERS
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Petitioner Pro se

QUESTION PRESENTED

If a "Key Man" possesses a unique talent that is essential to economically sustain a business, is the loss of that talent, due to the denial of medical care for a personal injury, an injury to business and property, under the Racketeering Influenced and Corrupt Organizations [RICO] Act?

RULE 14.1(b) STATEMENT

A list of all parties to the proceeding in the court whose judgment is the subject of the petition is as follows:

Plaintiff-Appellant and Petitioner:
Jimmie Vickers.

Defendants-Appellees and Respondents:
Weeks Marine, Inc., and
Atlantic Sounding Co., Inc.

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PETITION FOR WRIT OF CERTIORARI

Jimmie Vickers, the Petitioner Pro se herein, respectfully petitions for a writ of certiorari to review the opinion and judgment of the U.S. Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Fifth Circuit, dated February 25, 2011, is reproduced at Appendix 1-3.

JURISDICTION

The judgment of the U.S. Court of Appeals for the Fifth Circuit sought to be reviewed was entered on February 25, 2011. The petition is timely under 28 U.S.C. § 2102(c) and Supreme Court Rule 13.1 because it is being filed within 90 days after a judgment in a United States court of appeals. This Court has jurisdiction to review the judgment of the U.S. Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 18 of the United States Code, 18 U.S.C. §§ 1961-1968. The relevant statutory provision involved is 18 U.S.C. § 1964(c), which states as follows:

> *(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.*

STATEMENT OF THE CASE

The Petitioner, at all times referred to herein, was the key man and majority stockholder of Vickers Marine, Inc.

Petitioner Vickers has been self-employed continually in the marine industry since 1981, as a mechanic, boat repair person, and Captain.

In 1993, Petitioner Vickers underwent testing by the U.S. Coast Guard and was issued a U.S. Merchant Marine Officer's License, which allowed him to serve as "MASTER OF STEAM OR MOTOR VESSELS OF NOT MORE THAN 100 GROSS REGISTERED TONS UPON NEAR COASTAL WATERS. . . ."

On September 14, 2007, Petitioner Vickers formed a Sub Chapter S Corporation. The name of this Corporation is "Vickers Marine, Inc." [Taxpayer Identification Number 26-1168986]. In late 2008, the marine business became slow and Petitioner Vickers sought work from other companies to supplement his company's income.

On January 13, 2009, Petitioner Vickers was contacted by Respondents, Weeks Marine, Inc.'s Crew Coordinator, Sandra Lee, who offered him a part-time position with Weeks Marine, Inc. as a Captain. Petitioner Vickers accepted this offer and in January 2009, began working for Weeks Marine, Inc.

All of the money paid to Vickers for the work he did for Weeks Marine, Inc. was direct deposited into Vickers Marine, Inc.'s bank account.

Petitioner Vickers worked for Weeks Marine, Inc. for 14 days, and then he worked for Vickers Marine, Inc. for 7 days. He alternated between the two companies on this schedule for the duration of his association with the Respondents.

On May 18, 2009, while in the performance of his duties as a Captain, aboard the M/V Pandora [a vessel owned by Weeks Marine, Inc.], Petitioner Vickers was involved in an accident and suffered a bodily injury. Immediately after the injury occurred, he notified his Supervisor, and was relieved of his duties. Petitioner Vickers requested medical treatment, and filled out an accident report. Respondents were legally obligated to provide medical care to Petitioner Vickers under Maritime Law.

After waiting 3 hours without medical treatment, Vickers went to seek medical help on his own.

In a letter dated June 8, 2009, the Respondents informed Petitioner Vickers that they would not be responsible for his medical care. And on that same day [less than 3 weeks after the accident], the Respondent, Atlantic Sounding Co., Inc. filed a "Complaint for Declaratory Judgment," against Petitioner Vickers, in the U.S. District Court for the Southern District of Mississippi, Case No. 1:09-cv-0346, asking the Court for a ruling declaring that Petitioner Vickers was not a "seaman" as defined by Maritime Law.

Petitioner Vickers subsequently discovered that the Respondents, Weeks Marine, Inc. and Atlantic Sounding Co., Inc., used these preemptively filed suits numerous times before, in order to deny, delay and reduce legally mandated maintenance and cure payments to other injured seamen.

Petitioner Vickers was the "Key Man" in Vickers Marine, Inc., and as such, was a valuable asset, and a necessary component to his business.

The delay in medical treatment prevented Vickers from functioning as the key man of his business and subsequently his business failed causing him to lose the use and enjoyment of his business and property as a result of the racketeering activity of the Respondents.

REASONS FOR GRANTING THE PETITION

In affirming the District Court's decision in this matter, the Fifth Circuit has decided an important federal issue that determines that a person is not, and cannot be, a valuable asset of a business.

There is conflict within the Circuits concerning this issue, and it should be resolved by this Court. In *Grogan v. Platt*, 835 F.2d 844, 846-47 (11th Cir.1988). The 11th Circuit held that murder victims were not entitled to bring suit under Civil RICO.

However, the Court did concede that the argument "that persons who are killed or injured by RICO predicate acts suffer real economic consequences as a result, and these economic consequences fall within the category of injury to "business or property," has some merit.

In 2005, the Ninth Circuit introduced a little twist to the bright-line rule that injuries to "business

or property" could not include lost wages. In *Diaz v. Gates*, 420 F.3d 897 (9th Cir. 2005), Diaz alleged that corrupt police officers falsely imprisoned him, which caused various forms of economic loss, including lost employment, lost business opportunities, and lost wages.

Diaz described *Grogan*'s reasoning as "flawed." *Id.* at 902. The *Diaz* court further distinguished "the mere loss of something of value (such as wages)" from "injury to a property interest (such as the right to earn wages)." *Id.* at 900 n.1. The Ninth Circuit held that although the former were not compensable as injuries to business or property, the latter form of economic harm was actionable under section 1964(c). *Id.* at 903. As in *Diaz*, the petitioner in this case, Jim Vickers, suffered two types of injuries: (1) the personal injury to his body and (2) the property injury of interference with the performance of his duties within his business, by committing a predicate act aimed at denying, and delaying medical treatment. Vickers could not fulfill his employment contract or pursue valuable employment opportunities because he was denied medical treatment.

It was the denial of medical treatment, not the personal injury, that caused Vickers to lose his business and property.

In his opinion in "*Diaz,*" KLEINFELD, Circuit Judge, with whom REINHARDT and BERZON, Circuit Judges, join, concurring, states:

> *Here is the plain and express logic of the statute: (1) section 1964 establishes a civil cause of action for a violation of section 1962; (2) section 1962 uses a term of art defined in section 1961 to denote violations; (3) section 1961 expressly provides that various personal injuries, as well as other kinds of wrongdoing, constitute the misconduct giving rise to a cause of action. I see no way around this plain language of the statute. That is why I part ways from Grogan and Doe, the Seventh and Eleventh Circuit cases holding that personal injury claims cannot give rise to RICO standing. If they were right, then the words "murder" and "kidnapping" in the statute would have to be wrong, which is impossible. Our tools of statutory construction do not include an eraser.*

In January 2006, the Seventh Circuit published its opinion in *Evans v. City of Chicago*, 434 F.3d 916 (7th Cir. 2006), which appears to be in direct conflict with *Diaz*. Like the plaintiff in *Diaz*, the plaintiff in *Evans* alleged that he had been maliciously prosecuted and illegally imprisoned by law enforcement.

The Seventh Circuit, however, rejected the plaintiff's claim that he had been injured in his "business

or property" and had standing to sue under section 1964(c), stating that

> *. . . earnings stemming from the lost opportunity to seek or gain employment are, as a matter of law, insufficient to satisfy 1964(c)'s injury to "business or property" requirement where they constitute nothing more than pecuniary losses flowing from what is, at base, a personal injury. . . . Thus, because [plaintiff's] claims of loss of earnings due to the inability to seek out or obtain employment constitute pecuniary losses stemming from personal injury, he lacks standing under RICO. . . .*

The U.S. Supreme Court, in *Sedima S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985), upheld the constitutionality of the RICO Act and made clear that, unless amended by Congress, the statute must be interpreted broadly.

The Circuit Courts are split on the issues, they seem confused as to what constitutes "business and property," and what constitutes "an injury to business and property."

An 8-year-old boy with a paper route and a bicycle has "business and property," the boy is the engine that makes the bicycle move. Any injury to the boy, is an injury to the bicycle's engine. They are interdependent. If you lose either the Bike, the Boy, or the Paper Route, the business suffers an injury. And if either of them are lost or injured through a

predicate act, there is "injury to business and property" under the RICO Act.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10-30622
Summary Calendar

JIMMIE VICKERS,

Plaintiff-Appellant

v.

WEEKS MARINE, INC.; ATLANTIC SOUNDING COMPANY, INC.,

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:09-CV-6230

(Filed Feb. 25, 2011)

Before JOLLY, GARZA and STEWART, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Jimmie Vickers appeals the district court's dismissal, for lack of standing, of his

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

action under the Racketeer Influenced and Corrupt Organizations (RICO) Act. Affording his pro se brief the benefit of liberal construction, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), Vickers argues that he has standing to sue under RICO because the bodily injury he sustained ultimately caused economic damage to his corporation, Vickers Marine, Inc.

A RICO plaintiff "must establish that he has standing to sue." *Price v. Pinnacle Brands*, 138 F.3d 602, 606 (5th Cir. 1998). As there is no recovery under RICO for personal injuries, a plaintiff does not have standing to sue under 18 U.S.C. § 1964(c) based on such injuries. *See id.* at 607 n.20. Here, any economic injury to Vickers's corporation was the result of Vickers's bodily injury. Thus, the district court did not err in dismissing his RICO action for lack of standing.

The judgment of the district court is AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 10-30622
Summary Calendar

D.C. Docket No. 2:09-CV-6230

JIMMIE VICKERS,

Plaintiff-Appellant

v.

WEEKS MARINE, INC.; ATLANTIC SOUNDING COMPANY, INC.,

Defendants-Appellees

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans

Before JOLLY, GARZA and STEWART, Circuit Judges.

JUDGMENT

(Feb. 25, 2011)

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

IT IS FURTHER ORDERED that appellant pay to appellees the costs on appeal to be taxed by the Clerk of this Court.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JIMMIE VICKERS, *pro se*	**CIVIL ACTION**
VERSUS	**No. 09-6230**
WEEKS MARINE, INC., ET AL.	**SECTION I/2**

ORDER AND REASONS

Before the Court is a motion to dismiss or transfer, filed by defendants, Weeks Marine, Inc. and Atlantic Sounding Co., Inc. (collectively referred to herein as "defendants").[1] Plaintiff, Jimmie Vickers, opposes the motion. For the following reasons, the motion is **GRANTED**.

BACKGROUND

On September 10, 2009, plaintiff filed this lawsuit alleging that defendants violated the Racketeer Influenced and Corrupt Organizations Act[2] ("RICO").[3] Plaintiff alleges that defendants have engaged in a pattern of activity designed to manipulate the forums of various lawsuits filed by seamen under their employ.[4] In their motion to dismiss or transfer, defendants argue that plaintiff does not have standing

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[1] R. Doc. No. 6.

[2] 18 U.S.C. § 1961 et seq.

[3] R. Doc. No. 1.

[4] R. Doc. No. 1, p. 4.

to assert violations under RICO because RICO does not extend to damages resulting from personal injury.

LAW AND ANALYSIS

I. STANDARD OF LAW

A district court can dismiss a complaint, or any part of it, for failure to state a claim upon which relief can be granted if the plaintiff has not set forth a factual allegation in support of his claim that would entitle him to relief. *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65, 167 L. Ed. 2d 929, 940 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)" (citations and footnote omitted)); *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007). This Court will not look beyond the factual allegations in the pleadings to determine whether relief should be granted. *See Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999); *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996). In assessing the complaint, a court must accept all well-pleaded facts as true and liberally construe all factual allegations in the light most favorable to the plaintiff. *Spivey*, 197 F.3d at 774; *Lowrey v. Tex. A&M Univ. Sys.*, 117 F.3d 242, 247 (5th Cir. 1997).

"To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'" *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir.

2007) (*quoting Twombly*, 127 S. Ct. at 1974, 167 L. Ed. 2d at 949). "'[C]onclusory allegations and unwarranted deductions of fact are not admitted as true' by a motion to dismiss." *Id.* (*quoting Associated Builders, Inc. v. Ala. Power Co.*, 505 F.2d 97, 100 (5th Cir. 1974)). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (internal citations omitted).

II. DISCUSSION

RICO creates a civil cause of action for "[a]ny person injured in his business or property by reason of a violation of [18 U.S.C. § 1962]." 18 U.S.C. § 1964(c). This provision requires a plaintiff to demonstrate an injury to his "business or property" in order to establish standing to sue. *Sedima S.P.R.L v. Imrex Co.*, 473 U.S. 479, 496 (1985). "The phrase 'injury to business or property' excludes personal injuries." *Hughes v. The Tobacco Institute, Inc.*, 278 F.3d 417, 422 (5th Cir. 2001) (*citing Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)). This exclusion covers not only damages directly related to the personal injury, but also the pecuniary losses therefrom. *In re Vioxx Products Liability Litigation*, 2007 WL 3104220 at * 2 (E.D.La. 2007) (Fallon, J.); *Bradley v. Phillips Petroleum Company*, 527 F.Supp.2d 625, 646 (E.D.La. 2007) ("Even the economic consequences of personal injuries do not qualify as 'injury to business

or property.'") (*citing Evans v. City of Chicago*, 434 F.3d 916, 926-31 (7th Cir. 2006)).

Plaintiff's complaint must be dismissed because plaintiff does not allege any damage to his business or property. Plaintiff's complaint alleges that, as the result of defendants' actions, "the Plaintiff has been injured economically and **physically**." (emphasis added).[5] Plaintiff also alleges that he "has been injured economically, and **in his person**[,] by the denial, deprivation, and delay of payments for medical treatment which the [d]efendants owed to him as a matter of law." (emphasis added).[6] A close reading of plaintiff's complaint reveals that plaintiff's injury resulted from a maritime accident for which plaintiff sought medical attention.[7] Plaintiff's complaint contains no allegations of other injuries not related to his personal injury. Because all of plaintiff's alleged injuries are either directly related to, or pecuniary losses resulting from, a personal injury, plaintiff does not have standing to file a RICO claim.

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[5] R. Doc. No. 1, p. 4.

[6] R. Doc. No. 1, p. 12.

[7] R. Doc. No. 1, p. 7.

Accordingly,

IT IS ORDERED that defendants' motion to dismiss or transfer[8] is **GRANTED** and plaintiff's complaint is **DISMISSED WITH PREJUDICE**.

New Orleans, Louisiana, April 6, 2010.

/s/ Lance M. Africk

LANCE M. AFRICK
UNITED STATES
DISTRICT JUDGE

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[8] Because of this Court's opinion with respect to plaintiff's standing to file a RICO claim, the Court does not reach defendants' arguments with respect to transfer of venue.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JIMMIE VICKERS, *pro se*	**CIVIL ACTION**
VERSUS	**No. 09-6230**
WEEKS MARINE, INC., ET AL.	**SECTION I/2**

JUDGMENT

Considering the record, the Court's orders dismissing plaintiff's claims against defendants, and the law, for the reasons assigned,

IT IS ORDERED that there be judgment in the above-captioned matter in favor of defendant and that the cause of action against defendant be **DISMISSED WITH PREJUDICE**.

New Orleans, Louisiana, April 6, 2010.

/s/ Lance M. Africk
LANCE M. AFRICK
UNITED STATES
DISTRICT JUDGE